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Ex Parte

May 22, 2007

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *In the Matter of Section 272 (f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, WC Docket No. 02-112; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules, CC Docket No. 00-175*

In the Matter of Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunsets, WC Docket No. 05-333

Dear Ms. Dortch:

The purpose of this letter is to clarify Qwest's opposition to the imposition on Qwest, in the Federal Communications Commission's (the "Commission's") local exchange carrier ("LEC") Non-Dominant proceeding,¹ of any additional safeguards or other limitations on its provision of the relevant services beyond those imposed on Qwest in the Qwest Non-dominant Forbearance proceeding.² In the latter, the Commission concluded that the safeguards imposed by the statute and Commission rules that continue to apply to Qwest if it offers service through an affiliate that does not comply with section 272 or on an integrated basis, together with the additional targeted safeguards imposed in the *Qwest Forbearance Order*, provide more than adequate protection against anticompetitive conduct.

¹ *In the Matter of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules, WC Docket No. 02-112, CC Docket No. 00-175, Further Notice of Proposed Rulemaking, 18 FCC Rcd 10914 (2003).*

² *Qwest Communications International Inc. Petition for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunsets, WC Docket No. 05-333, Public Notice, 2005 FCC Lexis 6733 (Dec. 8, 2005).*

In the Qwest Forbearance Proceeding, the Commission addressed the status of Qwest in providing in-region interLATA services on an integrated basis – that is provided through Qwest’s Bell Operating Company (“BOC”) entity or through Qwest affiliates that are not compliant with the section 272 separate affiliate requirements.³ The Commission ruled that “provided Qwest complies with certain conditions and continuing statutory obligations, it is appropriate to forbear from section 203 of the Act and our rules for dominant carriers...”⁴ The *Qwest Forbearance Order* specifically found that any “exclusionary market power” that Qwest had by virtue of its control of facilities that competitors must access in order to provide competing services were adequately addressed by “the existing safeguards we discuss below and the additional safeguards we adopt in this Order...”⁵

As the Commission noted, Qwest will continue to be subject to a variety of existing regulatory safeguards: “dominant carrier regulation of its access services, including price cap regulation of most telephone exchange and exchange access services; the Commission’s accounting and cost allocation rules and related reporting requirements; equal access obligations under longstanding Commission precedent and section 251(g) of the Act; section 251 obligations; . . . the continuing general obligation to provide service on just, reasonable, and not unreasonably discriminatory rates, terms, and conditions pursuant to sections 201 and 202 of the Act[;] . . . the nondiscrimination requirement in section 272(e)(1) of the Act and the imputation requirement in section 272(e)(3) of the Act[.]”⁶ Qwest agrees that these are the existing safeguards that continue to apply to Qwest’s provision of in-region interLATA services either through an affiliate that does not comply with section 272 (except for the imputation requirement) or on an integrated basis.

With respect to “additional safeguards,” the Commission, in the *Qwest Forbearance Order*, also imposed specific conditions relating to special access performance metrics, the imputation requirement under section 272(e)(3), Qwest’s commitments with respect to certain calling plans and Qwest’s commitment with respect to monthly usage information. Qwest has complied and will continue to comply with these requirements for their duration.

As Qwest has previously informed the Commission, Qwest has ceased operating as a required separate affiliate. Indeed, Qwest has begun in earnest implementation of the relief granted in the *Qwest Forbearance Order* and is in the process of important short and long term business planning based on its understanding that the safeguards described above are the

³ *In the Matter of Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission’s Dominant Carrier Rules As They Apply after Section 272 Sunsets*, WC Docket No. 05-333, Memorandum Opinion and Order, 22 FCC Rcd 5207, 5208 ¶ 1 & n. 3 (2007) (“*Qwest Forbearance Order*”).

⁴ *Id.* at ¶ 1.

⁵ *Id.* at 5233-34 ¶ 53.

⁶ *Id.* at 5234-35 ¶ 54 (footnotes omitted).

remaining safeguards applicable to its provision of these services following the relief granted in the petition.

In light of the actions that the Commission took with respect to Qwest in the *Qwest Forbearance Order*, there is no legal basis for the imposition of additional safeguards on Qwest in the Non-dominant rulemaking beyond those set forth in the *Qwest Forbearance Order* and described above.⁷ Qwest met all of the criteria for forbearance specified in Section 10(a) of the Act, and the FCC so found.⁸

This submission is made pursuant to Sections 1.49(f) and 1.1206(b) of the rules of the Commission, 47 C.F.R. §§ 1.49(f), 1.1206(b).

If you have any questions, please call the undersigned or Melissa Newman (202-429-3120).

Sincerely,

/s/ Timothy M. Boucher

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⁷ See, e.g., *AT&T Corporation v. FCC*, 236 F.3d 729, 738 (D.C. Cir. 2001) (noting that FCC's section 10 forbearance authority is independent of alternative regulatory authority in same area).

⁸ It's also Qwest's position that it would need to get adequate notice and opportunity to comment (something that has not yet happened) before any additional requirements and obligations could be imposed in the rulemaking.